

AUGUST 17TH, 2004

TO:

Judge William M. Nickerson

Senior United States District Judge

United States District Court

101 W Lombard St,

Baltimore, MD 21201

RE: Case No: WMN-14-750

MALIBU MEDIA, LLC vs. John Doe subscriber assigned IP address 68.33.27.132

Dear Judge Nickerson:

Court Case Number 1:14-cv-00750-WMN

I am receipt of your court order dated 3/13/14 and I wish to inform the court that the charges outlined in the order are false and have no basis in fact. I have never downloaded the attached list of movies sighted in the attached documents filed with the attorney for MALIBU MEDIA Mr. Jon A. Hoppe, Esquire; 1401 Mercantile Lane #105; Largo, Maryland 20774. As I have looked into MALIBU MEDIA LLC on the Internet it is apparently a filing designed to extort monies from individuals that would rather settle than go through the expense of going to court to defend these charges.

Your honor I am at the mercy of the court as I cannot afford to pay a lawyer to defend me. I have financial difficulties since my wife and I are both out of work. She has very bad legs due to blood clots, and I have bad heart conditions. We have two Children in college and one son in high school and life isn't easy for us.

Your honor I spent hours and hours researching Malibu Media and the information I have found about them is beyond belief. Here are some examples below showing the true color of this "shakedown cartel" run by an unlicensed German investigator.

After months of reading so many hits online, the question is: "What would Malibu media and their lawyers prefer?" Piracy to stop or to continue? Of course to continue and from my intensive research Malibu Media and their lawyer M. Keith Lipscomb are not and did not take the necessary actions to protect their contents. They are legally encouraging the continued infringement beyond any REASONABLE investigative action.

YOUR HONOR I personally believe that for the majority of these Malibu Media cases, there is NO investigation beyond obtaining the ISP subscriber data. I assume that for a minimal number of cases the Lipscomb/German Controlling Firm do make some investigative steps (LexusNexus background checks & social media checks) on the ISP subscriber. Still this is NO "Investigation," only a simple data collection effort, template based case filings, and high-pressure settlement generation efforts. Basically Malibu Media does NOT investigate after the ISP subscriber information is released. To simply rely on the ISP record as the indicator of who to sue is reckless in my opinion and it is a starting point only.

I have been following Malibu Media trolls for a while since May. I understand Malibu Media's concern for piracy of their material, I do not agree with the methods they have taken to STOP piracy of their works, in my opinion this isn't about eradication, education or education about stopping piracy and how it effects them. This is more about revenue court filing to the subscriber along with a demand for money generation. Their whole litigation is NOT based on copyright enforcement nor about illegally sharing of their movies. This is another way to seek money from people that downloaded content from their trap. A dishonest tactics and mass extortion racket scheme.

Malibu Media's clips appear on the Pirate Bay BiT Torrent almost exactly two hours after their release. The overwhelming majority of these releases are seeded by a highly active user named Drarbg, presumably a bot that aggregates pirated content from other sources. Whoever operates this honey pot must be linked to someone who has access to Malibu Media and to the client area of the www.xart.com. If not an insider, then at least a person that paid for a subscription most definitely. So, are there ways to figure out who is the source of daily leaks? If so is such investigation affordable? The answer is a BIG yes to both questions.

In my opinion the Malibu Media movie lawsuits appear to have been designed from the start "as a for profit endeavor," not as a deterrent to piracy.

ONLINE HITS NEW INFORMATION: Malibu Media X-Art new release clips appear on the Pirate Bay almost exactly "two hours" after the release. That X-Art movie end up on BitTorrent very soon after release, A careful monitoring of the X-Art site will show that new movies are released at exactly 9:00pm California time on the day prior to the date listed. An examination of a "pre-data base" site, which aggregates information directly from the "warez scene", will show that X-Art movies appear in some cases no later than 4 minutes after 9:00pm PT, and almost universally within 10 minutes. Now, there are a few problems with this. First, **it is not even possible to download a movie from the X-Art website and upload it to a topline server that quickly.** Generally following strict video format standards, usually necessitating a conversion from the original format takes longer time—much longer than 4 minutes. Given that it's usually such a short interval this cannot be a large number of people. These methods have the great benefit of being entirely free to them, unlike the services of the Mysterious German Company monitoring, which certain statements made in past court filings suggest they pay quite dearly for. It is possible that they already do all of this themselves the "*cartel shakedown*." It is actually quite obvious why they do not go after "*initial seeders*" those who are observed to be consistently among the first seeders of torrents of their videos.

Another evidence that IPP Germans run US trolling operations, is Malibu Media and other Guardaley-affiliated trolls have been stonewalling discovery aimed at untangling the web of relationships between the Germans, their lawyers and plaintiffs. When the "oral contingency fee agreement" was inadvertently mentioned in an answer to interrogatories, it was bad enough, but the reality is even more shocking. The German "investigators" are not being paid on contingency. It is them who pay lawyers and plaintiffs a fraction of the settlement proceeds. Just think about it, all this copyright law abuse, fraud, misery, ruined families and careers, bankruptcies — **this grim theater is run by a foreign racket with the help from greedy lawyers.**

I used the word "fraud" deliberately. In thousands of frivolous cases that have been plaguing this country for years, not a single time a real party of interest (IPP German Guardaley) was disclosed. This gross deception won't stay hidden from US judges for long I hope. If Malibu cases and IPP software is so infallible why are they so very worried about bring the German whiz's to testify, **why do they routinely fight tooth and nail all attempts when IPP the German investigators methods are questioned ? ? ? ?**

Also Malibu Media is unclear which type of company Malibu media is. An Internet search of Malibu Media LLC turns up nothing but these 100's of lawsuits for copyright infringement. There is no corporate website, no advertising or marketing materials, and, perhaps most Important, no legitimate means for an individual to purchase the films that Plaintiff Claims to be trying to protect from infringement.

A Comcast subscriber does not have the opportunity to investigate and stop the activity from happening until months after it was observed. Malibu Media never stops monitoring for months and months of activity and Comcast ISP's the defendant never notified. If they had only monitored for just 30 days, they would have recorded a couple of movies of Malibu Media and that would be enough to blow the whistle on Comcast customers, but NO Malibu instead allow their movies to be shared and downloaded illegally 1000 's of times via Bit Torrent and Malibu Media did nothing to stop it. **WHY ?** Because if they actually try to stop it, they will reduce the number of people they can file law suits against and generate settlements. A case with many movies is likely to get a larger big bucks settlement, verses only a couple of movies.

And this German company IPP is a fact witness and never a reason is been provided why the German company IPP's compensation information is confidential. In fact, to allow an expert witness's fees to not be released would deprive the jury of the ability to judge credibility. In my opinion now you have the Germans the monitoring firm playing witness, playing law firm, and playing detective submitting evidence and affidavits in the course to get the legal action and directing it as it goes. I hope this bogus confidentiality concern won't fly with the judges.

POINT OF INTEREST: In one of Malibu Media exhibits, their claims against Defendant was obtained by the Plaintiff's German investigator, It says the German investigator establishes a direct connection TCP/IP with a computer using Defendant's IP Address... **and technically by doing this direct connect TCP/IP can easily lead to mac address of the defendant computer and bingo the defended hard drive is now seen and wiretapped by the Germans without consent which is a federal crime in USA..**

This IPP German Company Guardaley under whatever name they care to use is accessing computers and downloading information and video clips from them for the stated purpose of gaining information to be presented in court. Under the laws of several states that I've researched, that action is specifically named in state law as that of a private investigator, and does not differentiate between physical access or remote access. Those States also require that investigators be licensed in the State(s) where they operate. As far as I can tell, IPP the Germans Guardaley aren't. Therefore, Guardaley's using Bit Torrent in this manner is illegal, and therefore deprives them of the implied consent of the various wiretap laws and CFAA. There are also provisions regarding accessing computers in support of various forms of fraud and theft.

It's well known that while Malibu Media may suggest they are going to pursue all of their cases to the bitter end, they simply do not. Plenty of cases are dropped or otherwise terminated, although the precise reasons why this happen remain a closely guarded top secret.

IMPORTANT INFORMATION: All Malibu Media pornographic videos are not sold in the market, so the only way to upload their movies to Bit Torrents is through their subscribers or Malibu Media themselves or the Germans IPP. Now, I am left wondering why they are going after the people who are downloading file fragments rather than trying to go after their own subscribers (whose names they already have) who are the ones disseminating the files illegally in the first place. Or is it Malibu/Germans themselves doing it? Wouldn't it make more sense to go after the "high-level dealer" rather than the end user? Especially when you already have their information and can monitor their activity on their site. It would be so easy to simply put a little data-tag on every file that leaves your site that tells you which user it went to. Then all you have to do is pull that tag off of the appropriate file fragment at the bit-torrent end and voila you have your guilty party and you have cut off the illegal stream at the source, So The entire business is built around monetizing infringement not stopping piracy

IMPORTANT: So Lipscomb and Malibu say the "oral contingency" agreement was in place but was terminated when it accidentally became public during a case, but yet had sued how many people when it was still in effect? Why the "oral contingency" was only terminated after it became known?

Malibu and Lipscomb say that the "oral contingency" agreement only paid a fee for the information. If this is the case why did they race to terminate the "oral contingency" so quickly once it became known, seems a little odd doesn't it?

Has anyone known a lawyer to not have documents drawn up and signed by all parties in regards to transactions between a client and an entity it is doing business with? I have never seen a lawyer stand up and say "no need to get a written agreement signed spelling out payment and what the terms are and when the funds are due a simple handshake will suffice even though you're both in different countries". Right! Truly a scam.

Judges should have demanded that IPP/ German Guardley bring forth a senior company official and Malibu bring a senior principal to court to tell the Judges why this oral contingency agreement was changed mid-stream in the middle of a lawsuit brought forth with evidence provided by German IPP to initiate this lawsuit?

Malibu Media and Troll Lipscomb **We Can Prove Every Case**, are in the business of monetizing copyright infringement. Since Jul 2013, they have only opened up cases in 10 States (FL, PA, CO, MD, WI, DC, IN, MI, & NJ, OH). The fact that they do not file in more States is very telling. The fact that they tend to avoid jurisdictions with strong Doe Defenders and courts that question their operation is equally telling.

The Malibu Media shakedown enterprise is built upon lies. They repeatedly refuse to turn over information regarding IPP German investigators of Doe, and other peer infringers, due to burden and confidentiality concern. The justifications behind these refusals are not surprising. The actual reason is simple: Malibu Media and Lipscomb are scared to uncover the methodology employed by amateur foreign German company investigators IPP is in fact an alter-ego of infamous German troll Guardeley and its methods had been found flawed by a Berlin court in Germany. The software they use is an open-source FREE software, hastily modified by a script kiddie. Lipscomb and Malibu's Media assertions that each of its cases is totally different is absolutely not true, it is just another big lie. Malibu files the same complaint, It relies on the same (questionable) declaration from Tobias Fieser and IPP to file the same early discovery motions. It sends out the same deposition notices, at which it presumably asks the same questions. If it ever actually gets so far as serving anyone, it sends out the same overbroad discovery. When Doe's respond and seek discovery of their own, Malibu makes and then stands on the same boilerplate objections in each case. Then, as a last resort, if any defendants prove difficult in insisting on relevant discovery, Malibu files the same notice of voluntary dismissal without prejudice and unwillingness to let anyone under the cloak of his shady dealings with Germans

Following the News and internet hits. I found that Malibu Media always wants to know everything about the defendant but when it comes to the German investigator IPP production of relevant information, all we see is desperate attempts not to disclose any information and the inner workings of the Germans, In one court filing Malibu offered to produce some documents but, the only documents Malibu has actually produced are copies of copyright registrations which are publicly available online.

In another case Malibu agreed to produce a limited portion of the electronic materials it intends to rely on to prove its case but has indicated that doing so will take several weeks. **So Now the question is , Did Malibu not have this information when it filed suit ?** now you see, they don't even possess the information that forms the basis of their cases.

TECHNICAL ANALYSIS: You can't have known my IP was involved in the download or distribution unless you endorsed distribution of the torrent either by torrenting it yourself or hiring someone else. If they were truly concerned about protecting their copyrights and preserving profits they would immediately take certain actions once they had the IP addresses and start sending letters to ISP's subscribers. Why wait 8 months or longer monitoring ISP's?

IPP German company does not have a license to conduct investigative work in the US and is immune to US laws. Out of reach located overseas and cannot be prosecuted in USA. IPP and Malibu Media need to hand over, among other things, the PCAP files that IPP German company collected. The whole drive is The Nature of IPP's Evidence... it has the most detailed description yet of precisely what IPP does and what they have to hide.

Please Note that Malibu Media and IPP the Germans are willing to give up the logs, but NEVER NEVER the PCAP files. This is because PCAP files contain everything. The PCAP files will also reveal which BitTorrents trackers IPP is monitoring - - another thing that would blow their cover. The files would also detail how IPP goes about showing infringement, the sort of thing found in Delvan Neville's postings (he has a software development background to the formation of an IT forensics company specializing in BitTorrent-related activity. He maintain a strict privacy policy so the only projects that might get listed are those details now in the public record). This is of course something the German IPP would very very very much like to be Top Secret.

IPP establishes a direct TCP/IP connection with a computer that is distributing a "piece" of Plaintiff's copyrighted work which is exactly wiretapping and it is never mentioned precisely how IPP finds the doe computer. Malibu Media always trying to convince a non-technical audience that evidence of infringements is 99% accurate, this argument does not hold water. In fact, there is no argument there, just rhetoric and fluff.

IPP has so far given few details about its INTERNATIONAL IPTRACKER client and how it determines infringement. Those that it has given sound technically questionable and legally unsound. The PCAP files whole drive would confirm this, but Malibu Media would quickly dismiss the case if it gets that far, handing over the PCAP files and whole drive will put an end to their business model. As a German Court in Berlin found their technology/methods was very unreliable.

The defendants are required to supply Plaintiff with a complete copy of all system hard drives, as well as there have been no limitations on what they can search for or where Plaintiff can look in the systems (Someone correct me if I'm wrong). The defense should be afforded that same chance to search the evidence (which Plaintiff claims it has) in a forensically sound copy. But NO the plaintiff is not willing to show the equivalent of even one frame of the video, perhaps only a part of a pixel. So what does this prove?

IPP German company... Given the non-centralized nature of a swarm, how can they capture all the packets in a swarm unless they have a honey pot? And perhaps it would even be impossible without having a honey pot as uploads and downloads could occur between IP addresses via internet without going through their server. The other possibility would be that they are using their own tracker as a honey pot to lure in people. And Comcast Cable Company confirms online that **Copyright Trolls** are using the Pirate Bay BitTorrent as a Honey pot to lure people.

Another online HITS : Malibu will Google Earth the area in which you live via the IP address and get an idea of what the houses are worth and will not back down and IPP and Malibu Media game is to beat The defendant up psychologically and emotionally so that they are willing to settle without going to trial. It cost them nothing to delay and let the defendant worry about the future for months and months. Furthermore, the facts suggest that the Germans Guardaley/IPP/ is the true promoter of this whole scheme, and that together with the plaintiff's lawyers and the notorious "*settlement negotiators*," they directly control who to sue, whether and when to settle, and for how much.

If these German companies IPP can do as they or the Plaintiff's attorney claims, prove without a doubt that a film was copied via Bit torrents, then why aren't major players like Disney, Sony, MGM, etc. in the movie and record industry using them? What a wonderful opportunity for IPP to advertise their great abilities. One would think they would provide the conclusive evidence free of charge with the expectation that every film producer would beat a path to their door. Why settle any of these cases for chump change when they can win everyone and make millions? Yet they haven't gone to a **single full trial with jury**.

In one case, Magistrate Judge Stephen L. Crocker didn't like Malibu tactics. He froze eleven of Malibu's cases in western Wisconsin, and ordered Malibu's lawyer to explain why she shouldn't be sanctioned for violating court rules. Filing paperwork with the Court with no purpose except to harass or embarrass an opponent is a big no-no. Judge Crocker wondered why Malibu would file a list of movies with embarrassing titles that Malibu doesn't own and can't sue over.

CONCLUSION: It doesn't take much speculation to think that the Owners of Xart.com Mrs. Collette Field and Mr. Brigham Field seeded the video clips in an effort to promote their website and then when it got out of hand, decided they could make more money suing people than running their pay for porn website. During the Bellwether "trial" Malibu Media X-Art owner Mrs. Field filed and gave a tearful testimony about how pirates financially ruined their small family business by breaking copyright law. About a month later she goes and buys a Mansion in CA for 16 million dollars. It appears that as many other nouveau-riches, our pornographers preach double standards and don't respect the law themselves. Furthermore the X-Art owner Mrs. Colette Field, a German Immigrant and her husband Mr. Brigham Field film their flicks at home. They started doing it shortly after they bought their big \$16,000,000 dollars mansion in June 2013. Mrs. Colette Field, either due to blissful naivety or a belief that rich people are above the law,

EVIDENTIARY PROBLEMS: The failure to control for “false positives.”

The computer science literature and federal courts across the country have cited problems with the reliability of BitTorrent copyright plaintiffs’ methods of so-called identification of infringers. For example, a 2008 study, **“Challenges and Directions for Monitoring P2P File Sharing Networks – or –Why My Printer Received a DMCA Takedown Notice”** found that practically any Internet user can be framed for copyright infringement: “By profiling copyright enforcement in the popular BitTorrent file sharing system, we were able to generate hundreds of real DMCA takedown notices for computers at the University of Washington that never downloaded nor shared any content whatsoever. Further, we were able to remotely generate complaints for nonsense devices including several printers and a (non-NAT) wireless access point. Our results demonstrate several simple techniques that a malicious user could use to frame arbitrary network endpoints.” These results were affirmed years later in a study by the same authors on March 11, 2013.

Courts too are cognizant of the fact that not all IP addresses point to an actual infringer. In 1976 as Jimmy Carter won the presidency and the nation celebrated its bicentennial, no one predicted a bill intended to protect authors from unfair use of their original works would lead to multi-million dollar lawsuits for something as simple as the click of a mouse. The Copyright Act of 1976 was passed to promote the protection of original works and give artists rights to enforce those protections, but recently the Act has been exploited by companies trying to make a quick and easy dollar off of what is considered everyday copyright infringement.

Many individuals (or someone using their IP address) download movies, music or games from BitTorrent or other peer to peer sharing platforms. Companies such as Malibu Media, target and prey on these users to demand thousands of dollars in settlement for copyright infringement. This may seem like a legitimate exercise of copyholder’s rights, however these companies employ a **“sue to settle”** methodology which is largely profitable but ethically questionable. Generally, these companies, known as **copyright trolls**, file a complaint against multiple “John Does” (i.e. unknown defendants), but since they do not know exactly who they are suing, they subpoena the users’ internet service provider (ISP) for their names. ISPs, such as Time Warner or AT&T, then send a letter to the John Does informing them their information is going to be turned over. At this point, the copyright trolls then contact the users to squeeze thousands of dollars for settlement payments. The trolls pressure the users with threats of further public litigation. Oftentimes these cases involve pornography so the burden of social stigma is especially high. Additionally, users who may wish to enter professional careers or groups later on will have to disclose this potentially embarrassing information (e.g. doctors, accountants, etc.). Apart from this heavy-handed manipulation, the users who are named in this suit may not even be the illegal down loaders. Since the activity is traced to the IP address, the identified “user” is the person who foots the internet bill. Meanwhile, the actual downloader may be a roommate, family member or stranger who gains access to a poorly protected network.

I do not trust anyone associated with Malibu Media Lipscomb's division of Germans Guardaley. Therefore I'm not confident that the Germans won't find a way to maintain the lawsuit, ramping up the legal costs and increasing the pressure to settle, even if no evidence of infringement is found.

Also, Malibu's clips appear in the wild all over the internet merely 4-10 minutes after the release to X-Art.com, and the **X-Art's owners** apparently close their eyes and try to hide what's really going on with their shady business.

And the mounting proof of the German puppeteers seeding stuff in order to lure people is very **troubling**.